IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 14713 of 2005

Between:

Smt. B. Siva Sereesha W/o. Sri A. L. Nagarajm, R/o. Guntur, Secretary of Southern Institute of Medical Sciences, Group of Institutions, Mangaldasnagar Guntur.

..... PETITIONER

AND

1 The Dy. Commissioner, Prohibition and Excise, Guntur.
2 The Superintendent of Prohibition and Excise, Guntur.
3 The Health Officer Guntur Municipal Corporation, Guntur.
4 M/s. Vijayalakshmi Wines & Bar Proprietor Mr. K. Ramadas, Mangaldasnagar Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ more particularly one in the nature of writ of mandamus declaring the action of the respondents 1 to 3 in trying to give licence to 4th respondent to run M/s. Vijayalakshmi Bar and Restaurant, Mangaldasnagar, Guntur, adjacent to the gate of S.I.M.S. College of Physiotherapy, Mangaldasnagar, Guntur in contravention to A.P Prohibition and Excise Act and Rules circulative of Articles 14 of the Constitution of India and the provisions of A.P Prohibition and Excise Act and Rules made thereunder.

Counsel for the Petitioner: MR.E.V.BHAGIRATHA RAO

Counsel for the Respondent No.1 to 3: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent No.4: None appeared

The Court made the following :

:: ORAL ORDER ::

The writ petition is premature. The petitioner claims to be the Secretary of Southern Institute of Medical Sciences, Group of Institutions, Mangaldasnagar, Guntur, where over 1000 students including 800 girl students are pursuing education. The petitioner came to learn that the 4th respondent has applied for and is likely to be granted an IL17 licence for establishment of a Bar and Restaurant, which is to be located adjacent to the College of Physiotherapy, maintained by the petitioner-Society. On the apprehension that the 4th respondent's application for IL17 licence would be considered favourably, the petitioner got issued a legal notice on 1.6.2005. The petitioner apprehends that the 1st respondent will not consider the petitioner's objections and would nevertheless grant a licence to the 4th respondent even though issuance of such licence is prohibited under the extant and operative rules which prohibit grant of an excise licence adjacent to any established or recognized educational institution or temple within the specified prohibited distance.

There is no basis for the petitioner's apprehension. The grant of licenses is governed by Legislation and statutory rules and Excise administration is required to act inconformity with such statutory mandate. Any violation of the explicit statutory mandate would expose the officials concerned to a legal action including appropriate disciplinary proceedings under the conduct rules governing their service. There is also a presumption of regularity of governmental conduct, a presumption that is rebuttable but not at this stage. At present the petitioner's apprehension that the Excise officials will violate the law, is without basis. The petitioner's representation as a resident of the locality is bound to be considered by the competent authority and dealt with before issuing any IL-17 licence, particularly as the vend of alcoholic beverages including under an IL-17 licence is essentially a *re extra commercium.* Vast discretionary power is conformed on the Excise officials to ensure safeguards to individuals and the community in general against the negative influences of such vending of alcohol.

In view of the analysis above, there are no merits in the writ petition. The writ petition is accordingly dismissed as premature. No order as to costs.

Dated: 08.07.2005 ----------

Pvsn Justice G. Raghuram

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Dy. Commissioner, Prohibition and Excise, Guntur.
2 The Superintendent of Prohibition and Excise, Guntur.
3 The Health Officer Guntur Municipal Corporation, Guntur.

3. Two CCs to G.P for Prohibition and Excise, High Court Buildings, Hyderabad(OUT)

4 2 CD copies

*Form-NIC-OGS/WP{**CHP**}*